

**DRAFT
6/11/14**

116-120 WEST HURON STREET DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and 116-120 W. Huron, LLC, a Michigan limited liability company, with principal address at 115 Depot Street, Ann Arbor, Michigan 48104, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as 116-120 West Huron Street Site Plan, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 116-120 West Huron Street, and desires site plan and development agreement approval thereof, and

WHEREAS, the PROPRIETOR desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETOR will install these improvements prior to any permits being issued.

THE PROPRIETOR HEREBY AGREES:

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water and sanitary sewer mains, private storm water management systems, public streets and alleys, sidewalks, streetscapes and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on

the latest date of the acceptance of any Improvements by the CITY. If the PROPRIETOR fails to construct the Improvements, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR, if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) To obtain all necessary permits and/or a license agreement from the CITY for the temporary closure and exclusive use of the public alley adjacent to the north of the site to facilitate construction of the development, and subject to the review of the Public Services Area, to pave the alley to Public Services standards prior to returning the alley to public use, and prior to the request for and issuance of any certificate of occupancy.

(P-5) To indemnify and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the PROPRIETOR, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-6) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as named insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-7) If the PROPRIETOR seeks to develop the site as a condominium, to prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-8) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the PROPRIETOR to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the PROPRIETOR one year after the date of acceptance by the CITY.

(P-9) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, PROPRIETOR shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-10) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the PROPRIETOR proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-11) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development improvements, and within one month after completion or abandonment of construction.

(P-12) Prior to the request for and issuance of any certificate of occupancy, to disconnect 26 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the Guidelines for Completion of Footing Drain Disconnections, Table A, and adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and PROPRIETOR agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. PROPRIETOR may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis at the Discretion of the CITY Public Services Area. If provided, to perform the footing drain disconnections upstream of where the sanitary sewer flows for the development connect to the High Level trunkline (intersection of First Street and Ann Street; CITY Manhole ID# 71-70470).

(P-13) To preserve and protect in place the historic façade of the Bus Depot at 120 West Huron Street during construction of the development, with the exception of the blade sign extending perpendicular from the façade which may be removed for its protection during construction, but shall be replaced prior to the request for and issuance of any certificates of occupancy. PROPRIETOR shall maintain the historic façade including the blade sign as part of the development for the life of the development.

(P-14) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that the building design achieves a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, the most recent version in effect at the date of this agreement, using an industry standard software energy modeling tool (EQUEST or equivalent). Further documentation or verification from an independent, qualified professional that the building achieves the two points shall be provided by the PROPRIETOR prior to any request for or issuance of a first certificate of occupancy.

(P-15) Prior to the request for or issuance of building permits, to provide a letter of intent or other evidence satisfactory to the City Attorney that indicates how the two car-sharing service parking spaces included as part of the development to satisfy the off-street parking requirements will be reserved, signed and enforced. The car-sharing service shall be operational prior to or at the time of issuance of any certificate of occupancy, and once the service is operational, PROPRIETOR shall provide the CITY with evidence of the availability of the car-sharing service within 15 days of request. PROPRIETOR agrees and acknowledges that

failure to maintain the car-sharing service will be a violation of the zoning ordinance regarding the minimum required number of parking spaces, consistent with Chapter 59, Section 5:167 of Ann Arbor City Code. In the event that PROPRIETOR is unable to contract with a vendor to provide such car-sharing services, or the full number of cars required herein, then PROPRIETOR shall provide the minimum number of parking spaces on or off-site as required by City Code.

(P-16) PROPRIETOR is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-17) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved development agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or development agreement.

(P-18) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-19) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the 116-120 West Huron Street Site Plan.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the PROPRIETOR and the CITY agree as follows:

(T-1) This agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

BEGINNING at the SW corner of Lot 4, of the "Original Plat of the Village (now City) of Ann Arbor", Washtenaw County, Michigan, as recorded in Transcript, Pages 152 and 153, Washtenaw County Records;

thence N 01°48'23" E 182.50 feet along the West line of Lot 4 and Lot 5 of said "Original Plat" and the East right-of-way line of N. Ashley Street (66.00 feet wide);
 thence S 88°03'02" E 106.00 feet along the North line of the South 50.00 feet of said Lot 5;
 thence S 01°48'23" W 50.00 feet along the East line of the East 42.70 feet of the West 106.00 feet of said Lot 5;
 thence S 88°03'02" E 0.47 feet along the South line of said Lot 5;
 thence S 18°17'19" E 41.93 feet along the West line of "One North Main" Condominium Subdivision Plan No. 72, as recorded in Liber 2096, Page 816, Washtenaw County Records, and it's extension thereof;
 thence S 01°33'11" W 93.20 feet along said West line of "One North Main";
 thence N 88°01'49" W 121.29 feet along the South line of Lot 3 and Lot 4 of said "Original Plat" of the Village (now City) of Ann Arbor and along the North right-of-way line of W. Huron Street (82.50 feet wide) to the POINT OF BEGINNING.
 Being all of Lot 4 and being part of Lots 3 and 5 of said Original Plat and containing 21,054.58 square feet or 0.48 acres of land, more or less. Being subject to easements and restrictions of record, if any.

Being subject to:

Easement for ingress and egress as disclosed by instrument recorded in Liber 343, Page 129, Washtenaw County Records.

Building and use restrictions contained in instrument recorded in Liber 327, Page 357, Washtenaw County Records, but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin.

Affidavit concerning trespass to land, as recorded in Liber 3446, Page 530, Washtenaw County Records.

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the PROPRIETOR, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

116-120 W. Huron LLC
A Michigan Limited Liability Company

115 Depot Street, Ann Arbor, MI 48104

By:

Michael C. Martin, Member

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Michael C. Martin, Member of 116-120 W. Huron LLC, a Michigan limited liability company, on behalf of the company.

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning & Development Services
ATTN: Wendy Rampson
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265